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COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, Nov. 17, 1987 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:25 A.M. on Tuesday, November 17, 1987.

PRESENT

Rose Crenca, President
Neal Potter
Isiah Leggett

Michael L. Subin, Vice President
Bruce Adams
William E. Hanna, Jr.

ABSENT

Michael L. Gudis, President Pro Tem

The President in the Chair.

The Journal of November 3, 1987 was approved.

CALL OF BILLS FOR FINAL READING

SUBJECT: Bill No. 43-87. Streets and Roads - Covered Loads

Councilmember Hanna commented on the number of years that it has taken to enact this type of legislation. He said the legislation has received an overwhelming positive response from citizens and expressed the wish that the State Legislature would enact similar legislation to replace the existing State law which is difficult to enforce.

Councilmember Potter directed attention to an amendment proposed by Senior Legislative Attorney Faden, the second page of Mr. Faden's memorandum to the Council, dated November 17, 1987, drafted in response to a concern expressed by Mr. Neumann, attorney, about the need to include in the definition of "loose material" the word "dust" and the phrase "or emit significant quantities of dust." In the discussion that followed, it was agreed that "dust" is already covered in the definition of "loose material" set forth in Section 49-21A(c)(1).

Councilmember Leggett said that he will vote in favor of enactment of the bill, commending Councilmember Hanna for his work on the legislation. He said that he is concerned that the law will be challenged on the basis that it is preempted by state law, and urged citizens to lobby the State Legislature to enact a similar law that will resolve the problems that exist.

ACTION: Approved the following amendments:

Sec. 1. Chapter 49 is amended by adding section 49-21A as follows:

49-21A. Covered Loads.

- (a) A person must not carry any loose or bulky material in a motor vehicle on any County road, as defined in section 49-31, unless that part of the motor vehicle in which the load is carried is:

 - (1) fully enclosed on the bottom and all sides, and
 - (2) covered on the top by a firmly secured cover sufficient to contain all loose or bulky material, if the vehicle does not have a roof that covers the entire area in which the load is carried.
- (b) A cover ~~[[is]]~~ and (for bulky material) sides are not required if the material is contained or secured by other means that prevent its escape.
- (c) As used in this section:

 - (1) "loose material" includes dirt, ash, sand, pebbles, rocks, gravel, metal, glass, wood chips, and any other substance that can readily blow off or drop from a vehicle:
 - (2) "bulky material" includes bricks, cinder blocks, lumber, logs, gypsum board, barrels, pipes, furniture, and any other items that can readily drop from a vehicle.
- (d) This section does not apply to:

 - (1) a government agency, or a contractor hired by a government agency, that is using a motor vehicle to:

(A) drop sand, salt or other materials to improve traction:

(B) spread water or another substance to clean a road: or

(C) collect newspapers for recycling.

(2) a vehicle transporting agricultural products [[in their natural state]] as harvested.

(3) a construction or mining vehicle only when it is:

(A) crossing a highway, or

(B) moving between construction barricades on a public works project.

(e) The County Executive may issue regulations under method 2 to implement this section.

(f) Any violation of this section is a class B violation.

by motion of Councilmember Potter, without objection.

ACTION: Enacted Bill No. 43-87, as amended

by motion of Councilmember Hanna, by a roll call vote:

YEAS: Hanna, Adams, Leggett, Potter, Crenca

ABSENT: Subin (temporarily); Gudis .

SUBJECT: Bill No. 44-87. Sutherland Agricultural Land Preservation District

Councilmember Potter said that this completes an action that the Council has looked forward to for some time. This represents part of the State procedures for establishing an agricultural easement and purchasing development rights from an owner for the purpose of preserving agricultural land for the future.

Councilmember Crenca expressed the view that the process of preserving agricultural land through the establishment of an agricultural district is a better way to preserve agricultural land than through the Transferable Development Rights process.

ACTION: Enacted Bill No. 44-87

by motion of Councilmember Potter, by a roll call vote:

YEAS: Hanna, Adams, Leggett, Potter, Crenca

ABSENT: Subin (temporarily); Gudis.

SUBJECT: Emergency Bill No. 48-87. Collective Bargaining-Fire/Rescue Employees

Councilmember Hanna asked whether the items that are negotiable by the two existing employee bargaining units will apply to the subject unit under the subject legislation. Staff Director Spengler said that the subject bill amends the collective bargaining law; therefore the new bargaining unit has the same bargaining rights as the other two units.

Councilmember Hanna moved, duly seconded, to amend the subject bill to delete pension plans from the items that can be negotiated by the Fire/Rescue collective bargaining unit.

Councilmember Potter questioned whether the motion is in order in view of the advertising for the legislation. Senior Legislative Attorney Faden said that a general clause is included in the title of the legislation to provide the Council with some flexibility to amend legislation; in this case, he believes the deletion of pension plans would fit within this phrase, but that this could be challenged.

Councilmember Hanna suggested that, if his amendment is not in order, the bill be withdrawn from the agenda. Councilmember Leggett said that if there is the possibility that Mr. Hanna's proposed amendment could be challenged, he believes the Council should defer action for a week to provide the opportunity for staff to investigate the issue and prepare a memorandum on the subject. Mr. Leggett noted that the inclusion of pensions as a negotiable item could create a heavy financial burden for the County. Councilmember Adams suggested that, if the Council does defer action on the bill, the Council receive a briefing on the issues, as well as a memorandum, and that interested parties be notified of the deferral and rescheduling of the bill on the Council's agenda. Councilmember Potter suggested the need for a new bill to be drafted to address the pension issue since it applies to all of the collective bargaining units.

Mr. Rogers, Chief, Labor/Employee Relations and Training, explained that the bargaining units represented by the Montgomery County Employees Organization (MCGEO), UFCW, Local 400, as well as the bargaining unit of the Police Department, have the right to negotiate pension benefits. He said that the subject bill is a technical amendment to the County's labor law and includes firefighters as a separate bargaining unit.

In setting forth his reasons for objecting to pensions as negotiable

items for collective bargaining, Councilmember Hanna expressed concern about the financial impact that could be placed on the County government as a result of pension negotiations, particularly since the County has a defined benefit pension plan.

Councilmember Potter suggested that the Council recess its legislative session, so that this issue could be discussed later today after the Council meets in executive session concerning contractual issues involving collective bargaining.

Mr. Rogers explained the process that the new bargaining unit would have to initiate to become a certified unit. He pointed out that bargaining under the law could not occur until November 1988 and that the contract negotiated would not become effective until July 1, 1989. He said that if the subject law is not enacted the firefighters would be part of the Office, Professional and Technical Unit which is currently engaged in collective bargaining. Mr. Rogers noted that, under the collective bargaining legislation, pensions were not negotiable for one year after the effective date of the law (September 29, 1986).

Councilmember Subin suggested that the Council enact the subject legislation and that the pension issue be given to the Personnel Committee for consideration.

Councilmember Hanna withdrew his motion to amend the subject legislation, noting that he agrees with the alternative of addressing the issue for all employees.

ACTION: Enacted Bill No. 48-87

by motion of Councilmember Leggett, by a roll call vote:

YEAS: Hanna, Adams, Leggett, Potter, Subin, Crenca

ABSENT: Gudis.

Council President Crenca assigned the issue of collective bargaining for pension and other retirement benefits to the Personnel Committee.

The meeting adjourned at 10:04 P.M.

(Secretary's Note: After adjournment, at 12:25 P.M., the Council held another legislative session which was called by the President, without objection.)

SUBJECT: Bill No. 43-87. Streets and Roads - Covered Loads

Councilmember Subin moved, duly seconded, reconsideration of Bill No. 43-87, for the purpose of supporting Councilmember Hanna's legislation, since he was completing military reserve duty at the time the bill was enacted.

ACTION: Reconsidered Bill No. 43-87

by motion of Councilmember Subin, without objection.

Adopted amendments to the bill, as set forth in the earlier legislative session;

Enacted the Bill No. 43-87

by motion of Councilmember Hanna, by a roll call vote:

YEAS: Hanna, Adams, Leggett, Potter, Subin and Crenca

ABSENT: Gudis.

The meeting adjourned at 12:28 P.M.

This is an accurate account of the meeting:



Kathleen A. Freedman, CMC
Secretary of the Council

Minutes written by: Mary A. Edgar,
Senior Assistant Secretary